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09/868,871	06/05/2001	Jan Malik	153-5916/PCT	5113
324 7590 09/02/2008 JoAnn Villamizar Ciba Corporation/Patent Department 540 White Plains Road P.O. Box 2005 Tarrytown, NY 10591			EXAMINER YOON, TAE H	
			ART UNIT 1796	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/868,871  
Filing Date: June 05, 2001  
Appellant(s): MALIK ET AL.

\_\_\_\_\_  
Tyler A. Stevenson  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 11, 2008 appealing from the Office action mailed December 4, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

This appeal involves claims 1-7, 9, 12, 13, 15 and 17.

Claims 8, 10, 11, 14 and 16 have been canceled.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,100,930	Fukui et al	5-1992
5,308,549	Laermer et al	5-1994
5,574,082	Keller et al	11-1996
6,096,814	Tamura et al	8-2000
62-158737	Japan	7-1987
3903218	Germany	8-1989

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-7, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3903218 in view of Keller et al (US 5,574,082), JP 62-158737 and Fukui et al (US 5,100,930), and further in view of Laermer et al (US 5,308,549).

English translations of DE and JP are enclosed.

DE teaches stabilizer compositions comprising a sterically hindered phenol, phosphorous-containing antioxidant and  $\alpha$ -tocopherol in examples 2 and 4, and stabilization of polyethylene at page 2, lines 65-66.

The instant invention further recites a higher amount of  $\alpha$ -tocopherol and other species of sterically hindered phenol, phosphorous-containing antioxidant over DE. However, use of such amounts of  $\alpha$ -tocopherol and other species of sterically hindered

phenol, phosphorous-containing antioxidant is well known practice as taught by Keller et al (col. 4, lines 23-34, IRGANOX 1076 and 1035 of col. 5, lines 56 and 62 and Table I), JP (abstract), Fukui et al (col. 3, lines 62-63 and table 2) and Laermer et al (abstract). Said IRGANOX 1076 and 1035 are also taught in the instant specification, pages 6 and 7.

It would have been obvious to one skilled in the art at the time of invention to utilize the instant amount of  $\alpha$ -tocopherol and other species of sterically hindered phenol, orphosphorous-containing antioxidant in DE with teaching of Keller et al, JP and Fukui et al since modifying amounts of additive mixtures is a routine practice in the art and since the use of a higher amount of  $\alpha$ -tocopherol with respect to the amount of a sterically hindered phenol is well known as taught by Keller et al, JP, Fukui et al and Laermer et al and since the broad disclosure of DE includes the instant sterically hindered phenol and phosphorous-containing antioxidant.

2. Claims 1-7, 9, 12, 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3903218 in view of Keller et al (US 5,574,082), JP 62-158737 and Fukui et al (US 5,100,930), and further in view of Tamura et al (US 6,096,814) and Laermer et al (US 5,308,549).

The instant invention further recites a masterbatch and a mixture of phosphorous-containing antioxidant over DE. However, Example 1 of DE shows the instant mixture of phosphorous-containing antioxidants of claim 15 (appellant states that

a mixture of phosphorous-containing antioxidants of DE is equivalent to P-EPQ (the instant phosphorous mixture of claims 15 and 17) at top of page 8 of Appeal Brief).

Tamura et al teach use of a stabilizer with a polyolefin in a master batch form at col. 13, lines 41-47.

It would have been obvious to one skilled in the art at the time of invention to utilize the instant amount of  $\alpha$ -tocopherol and other species of sterically hindered phenol, or phosphorous-containing antioxidant in DE with teaching of Keller et al, JP and Fukui et al since modifying amounts of additive mixtures is a routine practice in the art and since the use of a higher amount of  $\alpha$ -tocopherol with respect to the amount of a sterically hindered phenol is well known as taught by Keller et al, JP, Fukui et al and Laermer et al and since the broad disclosure of DE includes the instant sterically hindered phenol and phosphorous-containing antioxidant, and further to obtain a polyolefin master batch containing said stabilizer mixture in DE with teaching of Tamura et al (DE also teaches concentrate (master batch) in lines 5-3 from bottom of page 4 (English translation)).

#### **(10) Response to Argument**

The above rejection 1 does not contain claims 15 and 17 which are included in the rejection 2. Appellant does not give any particular argument with respect to the rejection 2 and reiterates argument given to the rejection 1. Thus, the examiner would address all claims except claim 9 here.

Appellant assert that the second 1.132 declaration filed on September 25, 2006 shows unexpected results of the instant stabilizer mixture. However, the examiner disagrees with appellant for following reason;

1. Claims do not require repeated extrusion processes shown in said second 1.132 Declaration, and thus one extrusion process of a composition would be sufficient.
2. Comparison of the data (MFI) for the first extrusion pass shows almost same value for the instant samples 3 and 4 and comparative samples 1 and 2 in said second 1.132 Declaration. With respect to YI values, the absolute change of the YI value is almost same, sample 1 (2.45), sample 2 (2.80), sample 3 (2.58) and sample 4 (2.65). The examiner does not see any unexpected result contrary to appellant's assertion.
3. Example 1 of DE shows employing a mixture of a hindered tetrakis-phenol and three phosphorus-containing antioxidants in a ratio of 1:1, and thus use of said mixture with  $\alpha$ -tocopherol with a ratio of 10:1 for a hindered tetrakis-phenol and  $\alpha$ -tocopherol would be obvious modification to one skilled in the art.
4. Even given a full consideration and credit to said second 1.132 declaration for some probative value for claims 15 and 17, scope of the claimed invention (ratios of stabilizers) is broader than such showing (with particular ratios of stabilizers). Thus, said second 1.132 declaration still failed to overcome the rejection.

With respect to the above rejection 2, appellant does not rebut Tamura et al for a masterbatch, and points to the argument given for the rejection 1. Thus, the examiner's response would be the same, please see above response.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

THY/August 29, 2008

Tae H Yoon

/Tae H Yoon/

Primary Examiner, Art Unit 1796

Conferees:

David Wu, SPE AU 1796

/David Wu/

Supervisory Patent Examiner, Art Unit 1796

James Seidleck, SPE AU 1796

/James J. Seidleck/

Supervisory Patent Examiner, Art Unit 1796